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tion of nearly twenty pages of instructions in this regard to the new Manual for Courts-Martial,²⁷ and increasing the burden of army "paper-work."

Few changes of importance have been made in the Punitive Articles. Where an officer embezzles company funds or money entrusted to him by soldiers, he is now triable for these crimes after dismissal or other separation from the service if the crimes are not discovered, or if he is not apprehended, until after such severance has taken place. (Art. 94). The constitutionality of this section, or of the similar one first introduced in the Code of 1916, Art. 94,²⁸ has yet to be tested. It is suggested that his discharge or dismissal (without confinement) would put a complete end to his military status^{28a} and leave him amenable only to civilian courts and trial by jury under Amendment VI to the Constitution. The crime of desertion has been extended to include leaving one's place of duty or organization with intent to avoid a hazardous duty or to shirk important service. (Art. 28.) This would apply especially to absences just before an engagement. Formerly the offender could only be tried as absent without leave under Art. 61, or for misbehaviour before the enemy, (Art. 75,) or under "General Article" 96. If a conviction resulted in such case, and the death penalty was imposed,²⁹ confirmation by the President was necessary; whereas for desertion confirmation by the Board of Review (Art. 50½) of the commanding General of the Army in the Field, is sufficient. (Art. 48.) The attempt to relieve the enemy is now made punishable under Art. 81, and Art. 76 is clearly made to apply to "any person subject to military law" who compels his commanding officer to surrender.

These are the principal important changes made by the recent revision. On the whole they were necessary, and they are substantial, beneficial and apparently sound and sensible. It is to be hoped that they will be found as satisfactory in practice as they appear on paper.³⁰

THE MASSACHUSETTS SMALL CLAIMS PROCEDURE.—The Massachusetts Act authorizing small claims procedure, discussed in a recent number of this REVIEW,¹ left it to the justices of the district courts to make uniform rules with reference to such procedure. These rules have just been published, with the annotations of the Committee of the Justices.² In the main they follow out admirably the purpose of simplicity and speed which the Act aimed to achieve, adopting the mechanical devices of administration generally in use in small claims courts. There are, however, a few provisions which are worthy of special attention, because they may change somewhat the operation of the statute.

The principle of awarding discretionary costs has been extended by the rules not only to the case where a plaintiff brings his action by writ, where the action would be cognizable in a small claims court,³ (Rule 15.) but also to all cases where either party has set up a "frivolous or vexatious claim or defense". (Rule 9.) This may well be further extended to cover the *mala fide* request of

²⁷ *Manual for Courts-Martial*, 1921, pp. 55-74.

²⁸ Applying only to the embezzlement of Government funds. (1916) 39 Stat. 665, U. S. Comp. Stat. (1916) § 2308a, Art. 94.

^{28a} Cf. (1921) 21 COLUMBIA LAW REV. 330.

²⁹ "There have been no executions for [purely] military offenses during this war." Secretary Baker, *Hearings*, p.1356.

³⁰ The new Articles of War went into complete effect on Feb. 4th, 1921.

¹ (1920) 20 COLUMBIA LAW REV. 901. The act referred to is Mass., Acts 1920, c. 553.

² Amendments to rules of the district courts of Massachusetts. Promulgated January 3, 1921, effective January 31, 1921.

³ This was authorized by the Act, *supra*, § 5.

a defendant for a jury trial, since the statute, while providing that such requests are to be allowed, contains no restrictive clause, and a defendant might otherwise, for purposes of delay, resort to this plea.⁴ The rules provide, however, that in the ordinary case only the actual cash disbursements of the prevailing party are to be allowed as costs, except by special order of the court. (R. 9.)

The rules also provide that if the defendant admits the claim, but desires time to pay, he may so state in his answer, and, presumably, if his reason is a good one, a stay of execution will be granted (R. 3); the court may grant such a stay after default and without such request, but is not bound to do so. (R. 10, n.) This regulation may take the place of provisions for the appointment of trustees, *etc.*, contained in other Small Claims Acts, since it will equally well serve the purpose of preventing the harassing of insolvent debtors, or those temporarily embarrassed.⁵ Another of the rules looking to the same end is that allowing the payment of judgments in instalments. This method of collecting claims has been found to be of great practical value, and will probably prove a useful addition to the regulations.⁶

Finally, what may be as far reaching in effect as any of the provisions is contained in the definition of "attorney." The rules provide throughout that actions may in all their steps be conducted by the plaintiff or his attorney. This, by the definition of the word given in the rules, includes not only practicing attorneys but any "person specially authorized in writing to prosecute or defend the claim". (R. 12.) Just what the effect of this will be, is of course a matter of conjecture. But it seems quite possible that such a wholesale letting down of the bars, especially without apparent reason, may result in the growth of a class of professional small claims lawyers, who are not really members of the bar at all. Certain states have found it advisable to exclude all lawyers from small claims proceedings.⁷ This, in view of the simplicity of the procedure, and the consequent smallness of the fees seems a hardship on neither litigants nor attorneys. And that such a provision has not been found necessary in certain other states, is due to the same two considerations, as well as to the desire of members of the profession that the small claims courts be given a free hand.⁸ But whether the same results will follow where not lawyers alone, but any laymen, are allowed to prosecute claims on behalf of others, is not so clear. It seems on a casual examination that the benefits to be derived from this last provision may well be outweighed by the resulting damage.

⁴ Several states have specifically provided for the assessing of costs against a party that asks for a jury trial and loses in such trial. *Cf.* (1920) 20 COLUMBIA LAW REV. 905.

⁵ *Cf. Ibid.*

⁶ *Cf. Ibid.*

⁷ Kansas, Minn., N. Y. in some cases, and Ore.

⁸ *Cf.* (1920) 20 COLUMBIA LAW REV. 905